

# Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

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## CASE AND COMMENT

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### Nonpartisan Judicial Elections.

The nomination by both the Republican and Democratic conventions in New York state of two judges for the court of appeals who have already been in service on that bench, and one of whom is a Republican and the other a Democrat, gives great satisfaction to the majority of good citizens. Some of the supreme court judges have received similarly unanimous renominations. It is highly encouraging to those who believe in separating the judiciary as far from partisan influences as possible. It is also a strong proof of the fitness of the voters to be intrusted with the privilege of electing their own judges. Several severe lessons have been taught the politicians by the voters of New York state when political influences have been too prominent in the selection of candidates for the bench. There are, nevertheless, some in both parties in whom the theory that offices are meant for political rewards is so ingrained that they deprecate the action taken by the conventions of the great parties this year, and there were plenty of men in the conventions who were very reluctant to nominate on their ticket a

candidate who belonged to the other party. Nevertheless, good sense and political wisdom combined in overruling those ultra-partisans. The history of judicial elections in New York state has now pretty fully demonstrated that the judges of the higher courts, at least, if they have performed satisfactory service, will be re-elected, making practically a life tenure after the first election until they reach the age limit. Furthermore, frequent rebukes of the politicians when they have made a nomination which the voters thought to be only a reward for political services, and not based on any special fitness for the place, have made it clear that the people are fairly well able to protect the bench from being the gift of the political bosses. It would be too much to say that political influences are of no weight in the selection of judges, but it is not too much to say that the voters have compelled them to be kept well within bounds, and that there is an increasing evidence that they will not tolerate the use of the judicial office as a mere gift of spoils.

### Right of Taxpayer to Inspect Books of Municipality.

An unusually important case on the right of a citizen and taxpayer to inspect the books of a municipal corporation is decided in *State ex rel. Wellford v. Williams*, 110 Tenn. 549, 64 L. R. A. 418, 75 S. W. 948. It holds that a taxpayer has an absolute right to make such examination, but that

the enforcement of that right by mandamus is within the discretion of the court, depending upon the showing of a proper case for the exercise of the right. The court declares that a citizen and taxpayer should be allowed to make a general examination of the books of the municipality when this is important to the public interests, but that this should not be lightly granted or permitted with unnecessary frequency, and that only a trustworthy and reliable person should be allowed to make it, subject at all times and at every stage to the supervision of the court. The fact that an ordinance requires a submission of the books to the inspection of certain officers or committees, and that the grand jury also has a right to an inspection, is held insufficient to defeat the right of a citizen and taxpayer. It is also held that the fact that the person seeking the inspection is politically hostile to their custodian does not deprive him of the right, unless it is sought with a corrupt purpose, merely to further his animosity. Neither is the fact that it will produce worry and inconvenience sufficient ground for denying the right. Many cases in England and the United States have dealt with this question. In some of them the right has been deemed to be an absolute one, but most of the decisions, while conceding that a taxpayer, by virtue of his interest, has such a right to inspect the records, nevertheless turn on the sufficiency of the purpose for which this is desired, and, as the court in the case above says: "In theory the right of examination is absolute, but in practice it is at last only a matter of discretion." Where the inspection was desired for private, rather than for public, purposes it has been denied. When a citizen desires to make such examination for the purpose of obtaining information as to the proper administration of public affairs and correcting any abuse that may be discovered, some of the courts hold that he has sufficient reason for such inspection by judicial permission, subject, of course, to such regulations as will prevent any interruption or interference with the orderly course of business, or any mutilation or loss of the records or documents examined.

The question is, in some states, regulated by statutory provisions. While there is some considerable variety in the decisions respecting some of the instances in which the right is claimed, yet in general the authorities, as shown by a note to the above case, agree with

the doctrine there laid down, that, while there is theoretically an absolute right to examine, its enforcement is to a considerable degree a matter of discretion; also that it must be exercised under reasonable regulations.

### Regulation of Telegraphic Transactions.

A correspondent calls attention to §§ 2697-2700 of the Utah Revised Statutes, relating to telegraphic transactions, and expresses the opinion that they constitute "a curious piece of legislative work." Section 2697 provides that any notice, information, or intelligence, written or otherwise, may be given by telegraph, provided that the despatch containing the same be delivered to the person entitled thereto, or to his agent or attorney; and that notice by telegraph shall be deemed actual notice. By § 3337 this is extended to "any summons, writ, or order in any civil suit or proceeding and all other papers requiring service," with a provision that the telegraphic copy may be served or executed and returned as the original might have been. Section 2698 allows a power of attorney or other instrument in writing, duly proved or acknowledged and certified, to be sent by telegraph, and allows the telegraphic copy or duplicate the same *prima facie* effect as the original. Section 2699 allows checks, duebills, promissory notes, bills of exchange, and all orders or agreements for the payment or delivery of money or other thing of value to be made or drawn by telegraph, but does not permit any person other than the maker or drawer to cause such instruments to be sent. If the genuineness or execution be denied on oath, the existence and execution of the original must be proved, except that it is provided in § 2700 that a duly certified instrument sent by telegraph, together with the certificate, shall *prima facie* have the same force as the original, and the burden of proof shall rest with the party denying such genuineness or execution. The statute requires that "the original message shall in all cases be preserved in the telegraph office from which the same is sent. Our correspondent says: "The objections to such a statute are so obvious that it is needless for us to make any comment on the same; but it seems to us that such a piece of legislation

is vicious, and invites the perpetration of fraud, and endangers the title to real estate owned in Utah." He adds that the clause requiring the original message to be preserved in the telegraph office from which the same is sent is an attempt to legislate for all the other states in the Union.

The danger of fraud under such a statute certainly seems, at first thought, to be exceptionally great, but a conveyance or a promissory note sent by telegraph without authority is apparently the same under this statute as a forged instrument of that nature, except that it has a *prima facie* validity. Putting the burden of proof on the party denying it by force of the statute certainly puts the apparent maker of the false instrument to a disadvantage. Whether it can be a wise provision of the statute to make a forged document *prima facie* genuine seems, at the least, open to great doubt.

The objection which our correspondent makes, to the effect that the legislature is attempting to legislate for other states of the Union, does not seem to be specially strong. If a telegram sent from another state is to have any effect in Utah other than it would have if this statute were not enacted, it seems to be entirely proper for the legislature to prescribe the conditions under which it shall have such effect. If the legislature chooses to permit a message sent from another state to create a contract or a conveyance in that state, it seems entirely competent to provide that for that purpose the original message must be preserved in the office from which it was sent. In short, this statutory grant of a right may be made subject to such conditions as the legislature sees fit to impose.

### Execution by Will of Power of Appointment.

One of the questions frequently arising, and often perplexing, is as to the sufficient execution by will of a power of appointment which belongs to the testator. In some instances the answer is too plain for doubt. In others it is one of much difficulty. It is generally, if not always, held that wherever the will of the donee contains a plain allusion to the power, indicating that it was in his mind at the time of making his will, the power will be exercised thereby;

and, even if there is no such allusion to the power, a reference in the will to the subject of the power will show the intent to dispose of it, and thereby execute the power. Where the donee of a power of appointment has simply made a general provision in his will that is broad enough to cover the subject of the power, the question has given rise to a great deal of discussion. At common law this will ordinarily be insufficient; but even in that case it may be given effect if the will would otherwise be inoperative. That is to say, where the donee had no other interest which would be covered by the provision, except that which was included in the right of appointment. If he had such other interests, the provision of the will would be satisfied without exercising the power. If he had not, it must have been his purpose to execute the power. But these common-law rules have never been adopted in Massachusetts and New Hampshire, in which states a general provision has always been held to execute the power, unless a contrary intention was expressly stated or necessarily implied. In a note in 64 L. R. A. 849, a great number of English and American cases have been reviewed, and the conclusions above stated established. It appears that the common-law rules have been materially changed in some jurisdictions by statute. Under these statutes lands embraced in a power passed by a will purporting to convey all testator's real property, unless the contrary intent is shown, either expressly or by implication. But this applies only where the power is general and unlimited. One of the questions of much importance in this connection is as to what law governs the subject. In many instances there is a conflict between the law of the domicile of the donor and that of the donee. It is generally true that to execute a power the will must be a valid one, and entitled to probate. Its validity is generally governed by the law of the donor's domicile; but the formal requisites of its execution depend on the law of the donee's domicile. A power of appointment is sometimes conferred upon a class of persons, and this gives rise to several very interesting questions. A power may be exercised at different times and by different acts. The donee may execute a power by giving a less estate than the power covers. A power which involves trust and confidence in the donee cannot be delegated; but a

power that is in every sense general may be. The exercise of a power for a consideration or benefit to the donee is invalid; but, if exercised in favor of a charity, it is looked upon by the courts with liberality, and sustained if possible. Some of the rules above stated are not unqualified in all jurisdictions, and on some there is conflict; but they fairly represent the law of the subject. The one cardinal rule of interpretation is that, if the donee clearly intends to execute the power, the will will be a sufficient execution thereof.

### Diverting Interstate Streams.

One of the greatest and most difficult questions that has been presented in recent years to the courts is that of the relative rights of states and the inhabitants of different states in respect to the waters of interstate water courses. The case that has been for some time pending in the United States Supreme Court between Kansas and Colorado to determine whether or not the people of Colorado have a right to appropriate the waters of the Arkansas river, to the detriment of the people of Kansas, involves interests of vast importance to the people of those states. The question there to be decided is also of great importance in other localities. A decision pertinent to the case was rendered by the circuit court of appeals for the second circuit in the case of *Pine v. Mayor, etc.*, of the city of New York, 112 Fed. 98. That court held that the state of New York could not, under its power of eminent domain, authorize water to be taken from a non-navigable stream having its source in New York for the purpose of supplying a municipal corporation at a distance therefrom, if the effect would be materially to diminish the flow of the stream, to the injury of the rights of riparian owners on that stream in Connecticut. It further held that a Connecticut riparian owner might maintain a suit in equity to enjoin the diversion of the water from the stream in New York state to his injury, although the diversion was made under an attempted exercise of the right of eminent domain, and that he was not bound to seek as his remedy compensation in the eminent domain proceedings. This decision was rendered by two of the judges of the court, with one dissenting. The effect of the decision, how-

ever, is left in some doubt by reason of the fact that the case was taken to the United States Supreme Court, and the decision reversed on other grounds in 185 U. S. 93, 46 L. ed. 820. The Supreme Court withheld any opinion on the question of the right of the complainant in the case to damages for the reversion of the water, but held that the decree of the lower court was erroneous in the measure of relief given, even if it were assumed that the diversion of the water violated a legal right of the complainant. As the case stands, therefore, it is not of much weight as an authority, but it has certainly opened up a subject of far-reaching importance.

### Seymour D. Thompson.

One of the most conspicuous figures among the law writers of the present generation was the Honorable Seymour Dwight Thompson, whose death from diabetes occurred August 11, at East Orange, N. J. He had but a short time before been appointed by President Roosevelt a delegate to the Universal Congress of Lawyers and Jurists, which was soon to meet at St. Louis. An account of the life of Judge Thompson appeared in *CASE AND COMMENT* in March, 1897. His legal works have made his name known to the legal profession everywhere, and he has been brought face to face with a great number of the lawyers of this country in the bar associations to which he belonged and in many others before which from time to time he was called to deliver addresses on important legal subjects. Few men have done so much legal writing on important subjects as he. The amount of work of which he was capable was prodigious. As the editor of the *American Law Review*, he spoke in every issue on a wide variety of legal topics, and his editorial utterances with respect to legal matters of every kind were exceedingly frank and outspoken. He spoke of the courts with the same freedom in his editorials that lawyers are accustomed to do in conversation, but which few would be bold enough to do in print. His criticisms were always vigorous when he thought any court had made a decision which tended toward injustice. He had failings of which his friends were well aware, but he was a man of rarely engaging personality, of much

ability, and of extraordinary force. Nature gave him a rare stock of strength and endurance. If he had been less prodigal of these, he would doubtless have been spared for many more years.

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## Among the New Decisions.

### Banks.

A bank which receives from an agent for deposit in his own name the money of his principal, without notice of the agency, is held, in *Kimmel v. Bean* (Kan.) 64 L. R. A. 785, to be protected in applying it to a past-due debt of the depositor, to the same extent as in paying it out upon his checks, whenever such application is authorized by the agent, either expressly or by legal implication.

### Conflict of Laws.

A sale of goods on an order taken by a drummer within the state, subject to the approval of his principal, and transmitted to the latter in another state, and there approved and filled by the segregation and shipment of the goods, is held, in *Succession of Welsh* (La.) 64 L. R. A. 823, to be a contract of the domicile of the vendor, and not to give rise to a vendor's privilege on the goods, unless such privilege exists under the laws of such other state.

### Constitutional Law.

A statute limiting the recovery in an action for libel against a newspaper publisher to actual damages only, where it appears on the trial that the article was published in good faith, and that within a specified time after service of notice, by the party libeled, of his intention to bring an action specifying the statement alleged to be libelous, a full and fair retraction was published in as conspicuous a place and type in such newspaper as was the alleged libelous article, is held, in *Hanson v. Krehbiel* (Kan.) 64 L. R. A. 790, to be void, as denying the constitutional right to a remedy by due process of law for an injury suffered.

A statute providing that those who have served in the Army and Navy of the United

States in the War of the Rebellion, and have been honorably discharged therefrom, shall be preferred for appointment to office in every public department and upon all public works of the state, and of the cities and towns thereof, is held, in *Goodrich v. Mitchell* (Kan.) 64 L. R. A. 945, to be constitutional.

### Corporations.

See LIMITATION OF ACTIONS; TAXES.

### Ejectment.

See HIGHWAYS.

### Equity.

See INJUNCTION.

### Evidence.

A physician called by a stranger to furnish aid to one who has attempted suicide, and who is compelled to render his services against the will and opposition of the patient, is held, in *Meyer v. Supreme Lodge K. of P.* (N. Y.) 64 L. R. A. 839, to be within the provision of the statute prohibiting a physician from testifying to facts learned while attending a patient in a professional capacity.

### Gaming.

See INJUNCTION.

### Highways.

See also TREES.

The owner of the fee of land, subject to an easement of a public highway, is held, in *Bork v. United New Jersey R. & C. Co.* (N. J. Err. & App.) 64 L. R. A. 836, to be entitled to maintain ejectment against an intruder who wrongfully appropriates the same to a purpose wholly foreign to the easement; but his recovery of possession is held to be subject to the easement.

The construction in a public street of an elevated railroad track for the use of trains to be operated by steam, so as to interfere



with the abutting owner's right to light, air, access, and privacy, is held, in *De Geofroy v. Merchants' Bridge Terminal R. Co. (Mo.)* 64 L. R. A. 959, to be a taking of his property for which, under the Constitution, he is entitled to compensation.

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### Homicide.

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Where a death following a fatal blow struck in one county occurs in another, the commencement of a prosecution in either is held, in *Coleman v. State (Miss.)* 64 L. R. A. 807, to bar a subsequent one in the other, under a statute providing that the jurisdiction shall be in the courts of the county "where the prosecution shall be first begun," although a *nolle prosequi* is entered before the termination of the trial.

The death of one of the participants in a friendly scuffle through the accidental discharge of a pistol carried in the pocket of the other contrary to the provisions of the statute is held, in *Potter v. State (Ind.)* 64 L. R. A. 942, not to be caused by the performance of a wrongful act, so as to render the one carrying the pistol guilty of manslaughter, under the provisions of a statute that whoever unlawfully kills a human being involuntarily, but in the commission of some unlawful act, is guilty of that crime.

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### Injunction.

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The right to the interference of equity to enjoin one with whom margins have been deposited in a stock-gambling transaction from violating his agreement to keep them upon deposit in a bank until the transaction is closed, and prevent his withdrawing them from the bank, is denied in *Baxter v. Deneen (Md.)* 64 L. R. A. 949, although he intends to remove the funds from the state, and thereby defraud the complainant.

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### Insurance.

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One who, without knowledge of the facts, takes an assignment of a policy of life insurance which, under the statute, is void because taken without his consent upon the

life of one in whom the applicant has no insurable interest, and pays the premiums thereon in reliance upon the assurance by the agent of the company, confirmed by its vice president, that the policy is valid and the assignment good, is held, in *American Mut. L. Ins. Co. v. Bertram (Ind.)* 64 L. R. A. 935, to be entitled to recover back the premiums paid.

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### Libel.

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See CONSTITUTIONAL LAW.

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### Liens.

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Claims for labor are held, in *St. Marys Machine Co. v. National Supply Co. (Ohio)* 64 L. R. A. 845, not to take precedence of the lien of a chattel mortgage, upon the appointment of a receiver who takes possession of the mortgaged chattels after condition broken, under a statute providing that, where property of an employer is placed in the hands of an assignee or receiver, claims for labor performed within three months prior to the appointment of such assignee or receiver shall be first paid out of the trust fund in preference to other claims, since the mortgaged chattels, to the extent that they are required to satisfy the mortgage, are the property of the mortgagee, and not of the mortgagor.

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### Limitation of Actions.

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A foreign corporation transacting business in a state is held, in *Williams v. Metropolitan Street R. Co. (Kan.)* 64 L. R. A. 794, not to be entitled to plead the state statute of limitations in bar of a cause of action originating within the state in favor of a resident.

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### Magnetic Healers.

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See NEGLIGENCE.

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### Master and Servant.

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A street-car conductor in charge of an extra car, whose duties require him to run onto a single track extending beyond the termina-

tion of the double tracks of the road, which the rules of the company require to be occupied by only one car at a time, is held, in *Simmons v. Southern Traction Co.* (Pa.) 64 L. R. A. 205, to take the risk of injury from the absence of signals at the termination of the double tracks or schedules for extra cars, for giving notice when the extension is occupied by such cars.

### Mines.

The right to follow a vein on its dip is held, in *Jefferson Mining Co. v. Anchoria-Leland M. & M. Co.* (Colo.) 64 L. R. A. 925, not to apply in favor of a patentee of a lode-mining claim, the exterior boundaries of which include a portion of a claim already patented to another, which includes a portion of the apex of the vein, so as to enable the second patentee to follow the dip of a portion of the apex within the limits of his patent into the territory already patented to the prior claimant.

### Monopolies.

The restriction by a manufacturer, a corporation, and its employee of the sales of its products to those who refrain from dealing in the commodities of its competitors by fixing the prices of its goods to those who do not thus refrain so high that their purchase is unprofitable, while it reduces prices to those who decline to deal in the wares of its competitors so that the purchase of the goods is profitable to them, is held, in *Whitwell v. Continental Tobacco Co.* (C. C. A. 8th C.) 64 L. R. A. 689, not to be violative of the anti-trust act of July 2, 1890.

An agreement between publishers of and dealers in books, whereby they agree not to sell books of any kind to dealers who shall be suspected of selling copyrighted books at less than the net price fixed by publishers, or who shall supply books to dealers who are suspected of making such sales, is held, in *Straus v. American Publishers' Asso.* (N. Y.) 64 L. R. A. 701, to violate a statutory provision that every contract whereby a monopoly in the sale of any commodity of common use is or may be created, or whereby competition in the supply or price of any such article is

restrained or prevented, or whereby, for the purpose of establishing or maintaining a monopoly, the free prosecution of any lawful business is or may be restricted, is against public policy and void.

Members of a combination to enhance the price of a commodity, which is void under the anti-trust act, who share in the profits secured by the combination, are held, in *Atlanta v. Chattanooga Foundry & Pipe Works* (C. C. A. 6th C.) 64 L. R. A. 721, not to be able to claim exemption from suit on the part of a consumer under the provisions of a statute, on the ground that no direct purchase was made from them, nor complain that all the members of the combination were not made parties to the action.

The conveyance by the stockholders of several competing companies engaged in the manufacturing business, to one company organized for the purpose of taking their property and consolidating their interests, is held, in *Harding v. American Glucose Co.* (Ill.) 64 L. R. A. 738, to create an illegal trust.

### Mortgage.

See also LIENS.

A ring for the finger, although an article of personal adornment, is held, in *Salabes v. Castelberg* (Md.) 64 L. R. A. 800, to be a proper subject for a chattel mortgage.

### Negligence.

The manufacturer of a buggy, who sells it to a municipal corporation for the use of one of its employees, representing it to be strong and in good condition, but knowing that it is in fact defective, the defect being so concealed that the purchaser cannot detect it, is held, in *Woodward v. Miller* (Ga.) 64 L. R. A. 932, to be liable in damages to the person whose use of the buggy was contemplated at the time of the sale, for injuries caused by such defect.

To entitle one to recover damages for injuries negligently inflicted upon him by a magnetic healer from whom he is receiving treatment for disease, it is held, in *Logan v. Weltmer* (Mo.) 64 L. R. A. 969, that he is not bound to show that the treatment received was not proper or usual in magnetic healing; but it is held to be sufficient to



show that it was not proper to be given in any case to one in plaintiff's condition at the time of receiving it.

### Parent and Child.

A child is held, in *McKelvey v. McKelvey* (Tenn.) 64 L. R. A. 991, to have no right of action to recover damages against his father and stepmother for cruel and inhuman treatment inflicted upon him by the latter with consent of the former.

### Physicians and Surgeons.

See EVIDENCE.

### Powers.

A general disposition of his estate, real and personal, of whatever kind and wherever situated, without any reference to a power of appointment created by the will of another, or intent to indicate an intention to execute the power, is held, in *Lane v. Lane* (Del.) 64 L. R. A. 849, not to be, in the absence of statute, a sufficient execution of a power to direct and appoint in what manner a fund established by the other will shall be distributed.

### Principal and Agent.

See BANKS.

### Railroads.

The right of a railroad company to give one teamster an exclusive right to enter upon the railroad property to solicit the privilege of carrying the baggage of passengers, and to exclude others from its grounds, is sustained in *Hedding v. Gallagher* (N. H.) 64 L. R. A. 811, where the reasonable requirements of passengers are thereby fully met.

### Reward.

The vote buyer is held, in *Clinton County Comrs. v. Davis* (Ind.) 64 L. R. A. 780, to have no right to claim the reward offered by a statute providing that one who furnishes information resulting in the conviction of a person for selling his vote shall be entitled to a reward.

### Sale.

See CONFLICT OF LAWS.

### Street Railways.

See HIGHWAYS.

### Sunday.

The repairing of a belt in a factory so as to prevent 200 hands from losing a day's work the following day is held, in *State v. Collett* (Ark.) 64 L. R. A. 204, to be within an exception to a Sunday law permitting works of necessity on that day, where the defect was not discovered until too late to repair it on Saturday with the appliances at hand, and the owner of the mill was not negligent in not having foreseen the accident or having appliances at hand to repair it immediately.

### Taxes.

The right to assess a succession tax at the death of the testator upon the corpus of the estate is denied in *People v. McCormick* (Ill.) 64 L. R. A. 775, where the property is devised in trust which shall continue for a period of twenty years, during which time annuities shall be paid to certain persons named, among whom the estate shall be distributed at the expiration of that period if they are alive at that time, and, if they are not alive, among persons whom they shall appoint and certain persons named by the testator, under a statute authorizing a tax against a person who "shall become beneficially entitled, in possession or expectancy, to any property or income thereof," when the tax rate differs according to the relationship to the testator of the person who ultimately becomes entitled to the property.

A constitutional declaration that "proper-

ty," for the purpose of taxation, shall include franchises, is held, in *Bank of California v. City and County of San Francisco* (Cal.) 64 L. R. A. 918, to authorize taxation of the right to exist as a corporation.

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### Trees.

The owner of trees in a highway is held, in *Hazlehurst v. Mayes* (Miss.) 64 L. R. A. 865, to have no right of action for the necessary trimming of them for the installation of an electric-lighting system for the municipality, which has full authority to establish the same, and full jurisdiction over the highway within its limits.

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### Trusts.

See MONOPOLIES.

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### Veterans.

See CONSTITUTIONAL LAW.

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### Voters and Elections.

See REWARD.

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### Wills.

See POWERS.

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## New Books.

"Copyright Cases." Leading decisions with statute. By Arthur S. Hamlin, New York. G. P. Putnam's Sons. 1904. 1 vol. cloth, \$2. Sheep, \$2.50.

Hamlin's Copyright Cases, the appearance of which has been previously noticed in this column, is a collection of the cases on copyright decided in the United States and England since the enactment of the International Copyright Law of 1891. The excerpts from the decisions are more full than mere digest propositions, and yet do not embrace a full report of the case, only such portions of the opinions being taken as are necessary to set forth clearly the points decided. And the cases are arranged under a convenient classification, so that the law on any particular sub-

ject may be readily referred to. The work doubtless furnishes access to the case law on the subject intended to be covered by it better than any other work extant, and is almost indispensable to a publisher or copyright lawyer.

"Tennessee Chancery Appeals Reports." Vol. 1. \$3.25.

"Cases on Torts." Supplement. By Ames & Smith. 1 Vol. \$8 net.

"Pomeroy's Code Remedies." 4th ed. Revised by Thomas A. Bogle. 1 Vol. \$6 net.

"Pollard's Virginia Code." Annotated. Including Laws of 1904. 2 Vols. \$15 net delivered.

"Interstate Commerce Act and Federal Anti-Trust Laws." Annotated edition. By William L. Snyder. \$3.50.

"Brandt's Suretyship and Guaranty." 3d ed. 2 Vols. \$12.

"Elliott's Law of Evidence." 4 Vols. Sheep, \$24.

"Sutherland's Statutory Construction." 2d ed. 2 Vols. \$12.

"Wignore's Law of Evidence." 4 Vols. Sheep, \$26. Buckram, \$24.

"The National Banking Act." Annotated and Explained. By John M. Gould. 1 Vol. \$3.

"The Expansion of the Common Law." By Sir Frederick Pollock. \$2.50.

"Hawaiian Reports." Vol. 15. \$5.

"Tredway's Law of Banks and Trust Companies." (Pennsylvania) 1 Vol. \$5.

"Ohio Annotated Code of Civil Procedure." 6th ed. By W. H. Whittaker. \$4.

"Robbins's Treatise on American Advocacy." Based on the English work, Harris Hints on Advocacy. 1 Vol. Cloth, \$2. Sheep, \$2.50.

"Giddings's Tennessee Statutes Relating to Banks and Banking." 1 Vol. Cloth, \$2.

"Whitlock's Guide for Sheriffs and other Officers." 1 Vol. \$5.

"Nebraska Unofficial Reports." Vols. 1 and 2. \$2.75 net per Vol.

"Words and Phrases." 8 Vols. \$6 per Vol.

"Taylor's Analyzed Tables of the New York Supplement Reports." 85 Vols. Gummed Paper, \$5. Bound Volume, \$6.

"Annotations New York Reports." 177 Vols. Gummed Paper, \$5. Bound Volume, \$6.

"Appellate Division Reports." 90 Vols. Gummed Paper, \$5. Bound Volume, \$6.

"Miscellaneous Reports." Analyzed. 42 Vols. Gummed Paper, \$5. Bound Volume, \$6.

"Foreign Corporations and Taxation of Corporations." By Joseph Henry Beale, Jr. \$6.

### Recent Articles in Law Journals and Reviews.

"Restrictions on the Exercise of Criminal Jurisdiction."—1 Criminal Law Journal of India, 163.

"Evidence of Character in Criminal Cases."—1 Criminal Law Journal of India, 176.

"Concerning the Need of Creating Advocates or Defenders for the Accused." 1 Criminal Law Journal of India, 197.

"Observations on the Art of Advocacy."—1 Criminal Law Journal of India, 202.

"The Offense of Scandalum Magnatum as Constituting Contempt of Court."—29 National Corporation Reporter, 79, 80.

"Mistake of Law as a Ground of Equitable Relief."—3 Madras Legal Companion, 19.

"The Right to Light."—3 Madras Legal Companion, 30.

"Mob Law in America."—24 Law Register, 734.

"The Electoral System."—19 Political Science Quarterly, 369.

"Monopoly and Tariff Reduction."—19 Political Science Quarterly, 376.

"Municipal Accounts."—19 Political Science Quarterly, 391.

"Cleveland School Administration."—19 Political Science Quarterly, 402.

"Street Labor and Juvenile Delinquency."—19 Political Science Quarterly, 417.

"The Cession of Louisiana to Spain."—19 Political Science Quarterly, 439.

"Has Equity the Right to Fix the Rental of Property Where Arbitrators, Appointed by the Parties, Fail to Agree."—59 Central Law Journal, 181.

"Impeachment of Witnesses by Proof of Specific Wrongful Acts."—59 Central Law Journal, 184.

"The Relation of Labor and Capital—Organization of Employers and Employees."—29 National Corporation Reporter, 46, 47, 48.

"Christian Science and the Law."—10 Virginia Law Register, 285.

"Last Clear Chance."—10 Virginia Law Register, 301.

"Nunc Pro Tunc Orders."—28 National Corporation Reporter, 889, 890.

"Foreshore Rights."—68 Justice of the Peace, 410.

"Neutrality."—12 Law Student's Helper, 288.

"Mining Laws."—19 Chicago Law Journal, 1225.

"The Civil Code of Louisiana as a Democratic Institution."—12 American Lawyer, 331.

"The Law Applicable to the Use of Electricity in Modern Industrial Life (Concluded)."—12 American Lawyer, 337.

"The Louisiana Purchase."—12 American Lawyer, 341.

"The Southern Lawyer and the Negro."—12 American Lawyer, 345.

"Are Women People?"—37 Chicago Legal News, 39.

"Violation of the 'Three Fourths' Value Clause in a Fire Insurance Policy by Insured in Contracting for Other Insurance Exceeding Such Value."—59 Central Law Journal, 221.

"The Test by Which to Determine whether the Case is for the Jury."—59 Central Law Journal, 224.

"Overcrowding in Trains."—68 Justice of the Peace, 433.

"Highway Repairable by the Inhabitants at Large—Burden of Proof."—68 Justice of the Peace, 434.

"How can We Improve Our Judicial System?"—27 New Jersey Law Journal, 260-267.

"Liability of an Employer for the Torts of an Independent Contractor."—40 Canada Law Journal, 529.

"Whether an Establishment Not a Nuisance Per Se may be Abated as a Nuisance because of the Particular Locality."—59 Central Law Journal, 201.

"When and in What Cases may the Owner of Animals, Which Are Naturally Tame, be Liable for Their Mischievous or Wrongful Acts."—59 Central Law Journal, 204.

"The Responsive Answer in Equity Considered as Evidence for the Defendant."—52 American Law Register, 537.

"Irregular Associations—Part. III."—52 American Law Register, 576.

"Estates upon Condition."—19 Chicago Law Journal, 1239.

"Martial Law in Colorado."—66 Albany Law Journal, 270.

"The Year's Progress in Arbitration."—37 Chicago Legal News, 48.

"Land Transfers, Ancient and Modern."—10 Virginia Law Register, 365.

"Liability of Telegraph Companies for Negligence in the Transmission and Delivery of Messages."—10 Virginia Law Register, 392.

"Former Jeopardy."—10 Virginia Law Register, 410.

"The Law of Bank Checks—Practical Series."—21 Banking Law Journal, 583.

"The Method of Taxing Bank Shares in the Different States."—21 Banking Law Journal, 589.

"Bankers' Rights on Forged Signatures."—3 Canadian Law Review, 457.

### The Humorous Side.

NOT BREAD ALONE.—A Kentucky paper comes to hand which contains the following lawyer's card: "Mr. Bill Clarke, Lawyer, Smithland, Ky. Meat and Bread a Specialty. Other Grub Solicited."

KNEW THE NATURE OF AN OATH.—The New York World publishes an incident which occurred in one of the Jersey City criminal courts recently, in which a negro boy six years old was present as a witness. The justice hesitated to administer the oath, because of the doubt as to whether the child knew its nature, but concluded to test his understanding. "Do you know what this is?" asked the court, holding up the Bible. "It is the Bible," answered the boy, "the sacred book of God. It contains his word, which is the moral law. When we swear on it we admit his power to punish us for telling an untruth." The justice looked at the boy in surprise and then said: "It is the best definition I have ever heard from child or man." The boy was allowed to testify. Considering the youth of the boy, it may be queried whether or not he had not been specially prepared with this answer for the occasion.

MUST MAKE A LITTLE NOISE IN CARPENTER WORK.—An answer in a Baltimore court to a complaint for an injunction against disturbing the comfort and repose of the

complainant and his mother by carrying on a carpenter shop across the street goes a little out of the ordinary line in its admissions and suggestions to the complainant. It admits that defendant follows the humble pursuit of a carpenter, as he has not been blessed with inherited riches, but must obtain his livelihood by the labor of his hands and the sweat of his brow. It admits that the work begins at 7:30 in the morning, and that it makes some noise, such as driving nails of ordinary size, but declares that defendant has not been able up to the present time to obtain rubber nails, hammers, or rubber heels for his employees that would prove satisfactory in their work, and denies that the noise made is such as to disturb the nerves of a person in ordinary health, and not supersensitive. A statement in the complaint that the street is encumbered by "unsightly appliances of wood" is declared to be a severe criticism of the artistic taste of the Fraternal Order of Eagles, for whom these articles of wood had been made as decorations and articles of ornamentation for the streets of the city, and as objects of delectation to the eyes of the plebeian public. Defendant avers that it may be possible that the complainants have reached such a high degree of cultivation of their artistic and æsthetic qualities by contemplation of the great works of the masters in foreign lands, and by hearing great Wagner in operas and Beethoven's sonatas, that they cannot for a moment gaze upon, or endure without complaint and a shudder and a shiver, those horrid forms called "unsightly appliances of wood" which are objects of pleasure to the ordinary people in the ordinary walks of life. The defendant suggests that, if the complainants would only follow more closely the maxim handed down to us, embellished by the wisdom and experience of ages and taught to us in our youth, that "Early to bed and early to rise makes us healthy, wealthy, and wise," they would probably be freer from the mental and physical condition that gives rise to such a supersensitiveness as to notice such a small noise as the driving of a nail before 10 o'clock in the morning. Defendant avers that he has offered to keep his workmen quiet until after the complainant should announce in the morning that he had arisen from his slumbers, provided he would pay the defendant's men for the time; but that this has not been agreed to.

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